BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

ANDREW ASKREN	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,001,121
MAC EQUIPMENT, INC.	)	
Respondent	)	
AND	)	
	)	
ROYAL & SUNALLIANCE	)	
Insurance Carrier	)	

ORDER

Claimant appealed the February 7, 2002 preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict.

ISSUES

This is a claim for a November 12, 2001 accident. In the Application for Hearing filed with the Division of Workers Compensation on December 18, 2001, claimant alleged he was injured from "[r]epetitive bending, stooping, & lifting and sitting at [a] table in [the] machine shop."

After conducting a preliminary hearing on February 6, 2002, Judge Benedict determined that claimant sustained an accidental injury but the injury did not arise out of and in the course of employment. Instead, the Judge found it was more probably true than not that claimant was injured in an assault by a coworker that was personal in nature and not related to claimant's employment. Accordingly, the Judge denied claimant's request for benefits. In the February 7, 2002 Order, the Judge stated, in part:

> It is more probable than not that the Claimant was injured in an assault by a co-worker which was personal in nature and unconnected with any condition of employment.

> Even if this incident could be categorized as horseplay it is still non-compensable. William R Rogers, Jr. vs. Big Lakes Development Center, Inc., Workers Compensation Board docket no. 247,715 (Feb. 2000).

Claimant contends Judge Benedict erred. Claimant argues he has sustained an "unexplained" accident that is compensable under the Workers Compensation Act. Accordingly, claimant requests the Board to reverse the Judge and award him preliminary hearing benefits.

Conversely, respondent and its insurance carrier contend claimant's accident occurred either during horseplay or from a battery inflicted upon claimant by a coworker. In either event, they argue the accident did not arise out of claimant's work and, therefore, the injury is not compensable under the Act. Accordingly, respondent and its insurance carrier request the Board to affirm the preliminary hearing Order.

The only issue before the Board on this appeal is whether claimant's accidental injury arose out of his employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and after considering the parties' arguments, the Board finds and concludes that claimant's back injury arose out of and in the course of employment with respondent.

Claimant's back was injured on respondent's premises on November 12, 2001, during a lunch break, when a coworker pushed his way between claimant and another individual to sit at a picnic table. While crowding into the table, the coworker partially sat on claimant's back, pushing claimant down onto the bench. Immediately after the incident, claimant began having increased pain in his back with pain down into his left leg.

Shortly after the incident, claimant left work and sought medical treatment from Dr. James N. Warren, Jr., who was already treating claimant for back problems. Clinic notes from the Sabetha Community Hospital for claimant's November 12, 2001 visit describe the incident, as follows:

> This is a 43-year-old patient well known to me. He's a patient who has preexisting back pain secondary to end plate irregularities at the level of L4, L5, L5-S1 with bulging disks. . . . He's in the process of being referred to a neurosurgeon. However **today on 11-12-01 while going to lunch the patient was sitting on his bench with his back somewhat rotated to the right and a co-worker, George Tinkling who weighs about 250 lbs, stepped on his left hand and sat on his back and pushed him down on the bench.** The patient now comes in today with worsening back pain and pain radiating down the left leg. (Emphasis added.)

After examining claimant, Dr. Warren believed claimant had strained or sprained his back, aggravating a preexisting condition.

Claimant's accidental injury arose in the course of employment with respondent as it occurred on respondent's premises during a lunch break.

> Injuries occurring *on the premises* during a regular lunch hour arise in the course of employment, even though the interval is technically outside the regular hours of employment in the sense that the worker receives no pay for that time and is in no degree under the control of the employer, being free to go where he or she pleases.[1]

The assault against claimant arose out of the employment as it was causally related to the conditions and incidents of the employment. Because claimant's lunch break is deemed to be an activity or incident of his employment, there is a link between the employment and the coworker's jockeying for a position at the picnic table. An analogy is an assault by a coworker arising over possession of a tool, or over differences concerning company policy.[2]

WHEREFORE, the Board reverses the February 7, 2002 Order and remands the claim to the Judge for further orders consistent with the Board's findings and conclusions set forth above.

IT IS SO ORDERED.

Dated this ____ day of April 2002.

BOARD MEMBER

c: Roger D. Fincher, Attorney for Claimant
Michael J. Haight, Attorney for Respondent and its Insurance Carrier
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Workers Compensation Director

[1] *2 Larson's Workers' Compensation Law*, §21.02[1][a].

[2] *Springston v. IML Freight, Inc.*, 10 Kan. App. 2d 501, 704 P.2d 394, *rev. denied* 238 Kan. 878 (1985).